

HOUSE No. 2755

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the modernization of the room occupancy excise.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sean Garballey	23rd Middlesex
Martin J. Walsh	13th Suffolk
Matthew C. Patrick	3rd Barnstable
Christopher G. Fallon	33rd Middlesex
Benjamin Swan	11th Hampden
Stephen Stat Smith	28th Middlesex
William M. Straus	10th Bristol
Steven J. D'Amico	4th Bristol
Willie Mae Allen	6th Suffolk
Cleon H. Turner	1st Barnstable

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE MODERNIZATION OF THE ROOM OCCUPANCY EXCISE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 16 of chapter 62C of the General Laws, as appearing in the 2002 Official Edition, is hereby
2 amended by inserting after the word “operator” in line 53 the following words: -- or room reseller .

3 SECTION 2. Section 25 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after
4 the word “operator” in line 6 the following words: -- or room reseller.

5 SECTION 3. Section 67 of chapter 62C of the General Laws, as so appearing, is hereby amended by inserting after
6 the word “operator” in line 2 the following words: -- or room reseller .

7 SECTION 4. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by adding after
8 paragraph (b) thereof the following paragraph:--

9 (b1/2) “Doing business in the commonwealth”, ownership or operation of a bed and breakfast establishment, hotel,
10 lodging house or motel that is located in the commonwealth, maintenance otherwise of a place of business in the
11 commonwealth, the presence of an employee in the commonwealth on more than a de minimis basis, solicitation in
12 the commonwealth of orders for transfer of occupancy of accommodations located in the commonwealth,
13 solicitation in the commonwealth by a reseller of a contract or other cooperative arrangement with an operator with
14 respect to accommodations located in the commonwealth, inspection in the commonwealth of accommodations that
15 may be the subject of a cooperative arrangement between an operator and a reseller, or other exploitation of the
16 market for accommodations or resale of accommodations located in the commonwealth by any means whatsoever,
17 including, but not limited to, salesmen, solicitors or representatives in the commonwealth, whether such salesmen,
18 solicitors or representatives are employed by the operator or reseller, by a person affiliated with the operator or the
19 reseller by common ownership, or by any other party. This definition is intended to extend the jurisdiction of the
20 commonwealth over operators and resellers to the full extent authorized by the constitution and the laws of the
21 United States; provided, however, that nothing in this paragraph shall be interpreted as authorizing assertion of
22 jurisdiction over an operator or reseller that lacks a direct physical presence in the commonwealth or a physical
23 presence attributed to it by virtue of activities conducted on its behalf by another person .

24 SECTION 5. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby further amended by
25 inserting after the word “operator”, in line 49 thereof, the following words: -- or the room reseller.

26 SECTION 6. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby further amended by inserting
27 at the end thereof the following new subsection:-

28 (k) "Room Reseller" or “Reseller”, any person having any right, permission, license, or other authority from or
29 through an operator to reserve or arrange transfer of occupancy of accommodations the transfer of which is subject
30 to this chapter, such that the occupant pays all or a portion of the rent to the reseller, but such term shall not include
31 a tour operator.

32 SECTION 7. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 3
33 thereof and inserting in place thereof the following section: --

34 An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast
35 establishment, hotel, lodging house, or motel in this commonwealth by any operator or room reseller doing business

in the commonwealth at the rate of five per cent of the total amount of rent for each such occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than fifteen dollars per day or its equivalent. The operator or room reseller shall pay the excise to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.

SECTION 8. Section 3A of chapter 64G, as so appearing, is hereby amended by striking the first three sentences thereof and inserting in their place the following three sentences:-

Any city or town which accepts the provisions of this section shall be authorized to impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel located within such city or town by any operator or room reseller at a rate up to, but not exceeding, four per cent of the total amount of rent paid by the occupant for each such occupancy; provided, however, that the city of Boston is hereby authorized to impose such local excise upon the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house or motel located within said city by any operator or room reseller at the rate of up to but not exceeding 4.5 per cent of the total amount of rent paid by the occupant for each such occupancy. No excise shall be imposed if the total amount of rent paid by the occupant is less than fifteen dollars per day or its equivalent or if the accommodation is exempt under the provisions of section two of this chapter. The operator or room reseller shall pay the local excise tax imposed under the provisions of this section to the commissioner at the same time and in the same manner as the excise tax due the commonwealth.

SECTION 9. Chapter 64G of the General Laws, as so appearing, is hereby further amended by adding after Section 3A thereof the following section:-

Section 3B. Notwithstanding any other provision of this chapter, in cases in which occupancy is transferred through the use of a room reseller, the application of the excise shall be as follows:

If the room reseller is required to register under Section 6 of this chapter to collect the excise, the room reseller shall collect and pay to the commissioner the excise upon the amount of rent paid by the occupant to the room reseller, less the amount of rent that the reseller has paid to the operator.

Whether or not the room reseller is so registered, the operator shall collect and pay to the commissioner the excise upon the amount of rent paid to the operator by the reseller or the occupant.

SECTION 10. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking section 4 thereof and inserting in place thereof the following section:-

Reimbursement for the excise imposed under sections 3 and 3A of this chapter shall be paid by the occupant or the room reseller to the operator and by the occupant to the room reseller, as the case may be, and each operator and room reseller doing business in the commonwealth shall add to the rent and shall collect from the occupant or the room reseller the full amount of the excise imposed, in accordance with the requirements of sections 3 and 3A of this chapter, and such excise shall be a debt to the operator or room reseller, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

SECTION 11. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 5 thereof and inserting in place thereof the following section:-

The amount of the excise collected by the operator or the room reseller under the provisions of this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer issued or used by the operator or the room reseller.

SECTION 12. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 6 thereof and inserting in place thereof the following section:-

No person shall operate a bed and breakfast establishment, hotel, lodging house or motel in this commonwealth, or do business as a room reseller in the commonwealth, unless a certificate of registration has been issued to him in accordance with Section 67 of chapter 62C.

SECTION 13. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after the word "operator" in line 1 the following words:- or room reseller .

SECTION 14. Section 7A of Chapter 64G of the General Laws, as so appearing, is hereby further amended by inserting after the word "operator" in line 7 the following words:- or room reseller .

SECTION 15. Chapter 64G of the General Laws, as so appearing, is hereby further amended by striking Section 7B thereof and inserting in place thereof the following section:-

Every operator or room reseller who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The terms "operator" and "room reseller", as used in this section, include an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 16. Section 12 of Chapter 64G of the General Laws, as so appearing, is hereby amended by inserting after the word "operator" in line 5 the following words:- and each room reseller .

92 SECTION 17. The commissioner may promulgate rules and regulations necessary to implement sections 1 through
93 16 hereof.
94 SECTION 18. This act shall be effective for transfers of occupancy taking place on or after January 1, 2010.